

**OCT 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****PATRICK J. SAHLI,****Petitioner - Appellant,****v.****UNITED STATES OF AMERICA,****Respondent - Appellee.****No. 04-17548****D.C. Nos.****CV-04-01763-WBS(GGH)****CR-03-00458-WBS****MEMORANDUM\***

**Appeal from the United States District Court  
for the Eastern District of California  
William B. Shubb, Chief Judge, Presiding**

**Submitted October 11, 2005\*\***

**Before: NELSON, T.G., WARDLAW, and TALLMAN, Circuit Judges.**

Patrick J. Sahli appeals pro se the district court's denial of his 28 U.S.C. § 2255 motion challenging his conviction by guilty plea on multiple counts of mail fraud. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Sahli contends that the district court erred by imposing a sentence based on facts either contested by him or found by a preponderance of the evidence, contrary to *United States v. Booker*, 125 S. Ct. 738 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004). This contention is foreclosed by *United States v. Cruz*, 03-35873, 2005 WL 2243113, at \*1 (9th Cir. Sept. 16, 2005) (holding that “*Booker* does not apply retroactively to convictions that became final prior to its publication”) and *Schardt v. Payne*, 414 F.3d 1025, 1036 (9th Cir. 2005) (concluding that *Blakely* does not apply retroactively to cases on § 2254 habeas review).

**AFFIRMED.**